

UNITED STATES COURT
DISTRICT OF MASSACHUSETTS

RICHARD H. PENN AND ELLYN B. PENN

Plaintiffs,

v.

UNITED STATES OF AMERICA

Defendant.

COMPLAINT

Now comes the Plaintiffs, Richard H. Penn and Ellyn B. Penn, a married couple, and complains of the Defendant United States of America as follows.

PARTIES

1. The Plaintiffs, Richard H. Penn and Ellyn B. Penn, are a married individuals with a current residence of 85 Sevlard Road, Newton, Massachusetts 02459.
2. The Defendant is the United States of America.

JURISDICTION

3. Jurisdiction over this action is conferred upon this Court under 28 U.S.C. §§ 1131, 1340 and 1346.

FACTS

4. On or about April 14, 2016, the Plaintiffs through their accountants filed for an automatic extension to file their United States individual income tax return for the 2015 tax year.
5. The October 15, 2016, extended deadline to file the 2015 return fell on a Saturday, therefore, per IRC § 7503, the deadline was extended to Monday October 17, 2016.

6. On Monday October 17, 2016, the Plaintiffs through their accountants filed a timely filed their 2015 United States joint individual income tax return.
7. On October 14, 2019, the Plaintiffs through their accountants filed a timely amended joint individual income tax return for the 2015 tax year via FedEx.
8. The amended return claimed a refund of \$411,666.00.
9. As indicated on the FedEx tracking slip, the amended tax return was delivered to the Internal Revenue Service on October 16, 2019.
10. Per the mailbox rule under IRC § 7502, the date of the United States postmark stamped on the cover in which a return is mailed shall be deemed to be the date of delivery.
11. On November 29, 2019, the Plaintiffs received a letter from the Internal Revenue Service indicating the IRS disallowed their claim for refund in the amount of \$411,666.00 for the 2015 tax period.

CLAIM FOR REFUND

12. The Plaintiffs incorporate by reference paragraphs 1 through 11, above.
13. The Plaintiffs overpaid their joint 2015 income tax liability by \$411,666.00 and made a timely claim for refund.
14. The plaintiffs are due a refund of their overpayment of their 2015 income tax liability.
15. The letter from the IRS dated November 29, 2019, incorrectly states the claim for refund was not filed within the applicable three-year statute of limitations.
16. The Plaintiffs amended 2015 joint individual income tax return claiming a refund of \$411,666.00 was timely filed.

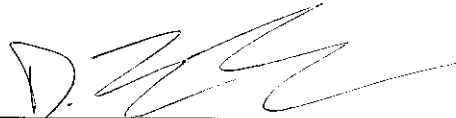
WHEREFORE, Plaintiffs respectfully request that this Court find that:

1. Plaintiffs made an overpayment of their 2015 income tax liability in the amount of \$411,666.00;
2. Plaintiffs are due a refund for tax year 2015 from the United States of \$411,666.00 of tax plus appropriate interest; and
3. Any other relief deemed appropriate by this Honorable Court.

Respectfully Submitted,

Plaintiffs Richard H. Penn and Ellyn B.
Penn

By their Attorneys,



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Dated: August 11, 2021